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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,572	12/31/2003	Larry Wilson	GLH 08-899283	8998
27667	7590	02/05/2008	EXAMINER	
HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			LEE, BENJAMIN WILLIAM	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/749,572	WILSON, LARRY
	Examiner	Art Unit
	Benjamin W. Lee	3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 15 November 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 November 2007 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

1. The amendment filed on 11/15/2007 has been entered. Claims 1-19 are pending in this application. Claims 1-3, 5, 7, and 8 have been amended. Claims 9-19 are new.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: **40, 42, 44, and 46** (in Fig. 3; specification, pages 10-11); and **50, 52, 54, 56, and 58** (in Fig. 4; specification, page 13); . Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claims 5, 7, 9, and 19 are objected to because of the following informalities:

- “steps” in claim 5 (line 2) should be changed to --the steps--

- “incidents” in claim 5 (line 3) is suggested to be changed to --accidents-- in order to be consistent with the rest of the claim language
- “and” in claim 7 (line 6) should be deleted
- “incident” in claim 7 (line 8) should be changed to --accident-- in order to be consistent with the rest of the claim language
- the period “.” should be deleted in claim 9 (line 12) since periods may not be used in claims except at the end of the claim and for abbreviations. It is also suggested that elements of the accident investigation form (lines 4-12) be given an additional indent for better readability. See MPEP § 608.01(m).
- “incidents” in claim 19 (line 3) is suggested to be changed to --accidents-- in order to be consistent with the rest of the claim language.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1-6, 8, and 9-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Re claims 1 and 8: The claims are directed toward methods, which fall under the four statutory categories of invention (i.e., process, machine, manufacture, and composition of matter). However, the processes disclosed in the claim are directed towards the judicial exception of an abstract idea (a method of reducing the frequency of industrial accidents). No physical transformation is present to establish a practical application of the abstract idea. Furthermore, the processes disclosed in the claims do not produce a useful, concrete, and tangible result. “Teaching the individual to effect critical error reduction techniques” may be useful and tangible, but is not concrete. Though an attempt may be made to teach an individual, there is no guarantee or reasonable expectation that the individual will learn the teachings. “Teaching the individual” is not substantially repeatable, and thus is not concrete. Therefore, the claim is directed toward non-statutory subject matter.

Re claims 2-6 and 10-12: The claims are dependent on claim 1 and do not disclose any further method steps that correct the deficiency. Therefore, the claims are directed toward non-statutory subject matter.

Re claim 9: The claim is directed toward a method, which falls under the four statutory categories of invention (i.e. process, machine, manufacture, and composition of matter). However, the process disclosed in the claim is directed toward the judicial exception of an abstract idea (a method of training individuals to avoid accidents). No physical transformation is present to establish a practical application of the abstract idea. Furthermore, the claimed method does not produce a useful, concrete, and tangible result. “Identifying critical error reduction

"techniques" may produce a useful and concrete result, but not a tangible result. Merely "identifying" critical error reduction techniques does not produce a tangible result since the claim does not positively recite any real-world application of the critical error reduction techniques.

Re claims 13-19: The claims are dependent on claim 9 and do not disclose any further method steps that correct the deficiency. Therefore, the claims are directed toward non-statutory subject matter.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-6, 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilson ("Better Methods, Better Results").

Re claim 1: Wilson discloses a method of reducing the frequency of industrial accidents comprising the steps of:

determining the mental state of an individual at the time of an accident or close call (see page 3, step 2);

classifying the cause of the accident as being due to the individual being in one of four hazardous mental states (see page 3, step 1);
identifying a state-to-error risk pattern (see page 3, step 3); and
teaching the individual to effect critical error reduction techniques, to avoid future occurrences of accidents (see pages 3-4, step 4).

Re claim 2: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of teaching comprises the step of teaching the individual to “self trigger” on entering a hazardous state before making the error again in the future (see pages 3-4, step 4).

Re claim 3: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of classifying comprises a step selected from the group consisting of:

classifying the individual to be in a mental state of “rushing” (see page 3, step 2);
classifying the individual to be in a mental state of “frustration” (see page 3, step 2);
classifying the individual to be in a mental state of “fatigue” (see page 3, step 2); or
classifying the individual to be in a mental state of “complacency” (see page 3, step 2).

Re claim 4: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the step of identifying comprises a step selected from the group consisting of;

identifying a critical behaviour of “eyes not on task” (see page 3, step 1);
identifying a critical behaviour of “mind not on task” (see page 3, step 1);
identifying a critical behaviour of “(moving into or being in) the line-of-fire” (see page 3, step 1); or
identifying a critical behaviour of “somehow losing your balance, traction or grip” (see page 3, step 1).

Re claim 5: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses teaching the individual to perform the steps of claim 1 in response to smaller incidents (see page 4, top of first column).

Re claim 6: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses instructing the individual to look for state-to-error risk patterns in the actions of others (see end of page 3 to the top of page 4).

Re claim 8: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses teaching the individual to perform the method of claim 1 (see page 4, top of first column).

Re claim 10: The teachings of Wilson as applied to claim 1 above have been discussed. Wilson further discloses the teaching step comprises teaching the individual to analyze close

calls and small errors, learning from them, to reduce the likelihood of major accidents occurring (see pages 3-4, step 4).

Re claim 11: The teachings of Wilson as applied to claim 1 above have been discussed.

Wilson further discloses the teaching step comprises teaching the individual to observe others for patterns which increase risk (see pages 3-4, step 4).

Re claim 12: The teachings of Wilson as applied to claim 1 above have been discussed.

Wilson further discloses the teaching step comprises teaching the individual to work on improving their good habits (see pages 3-4, step 4).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7 rejected under 35 U.S.C. 103(a) as being unpatentable over Buresh et al. (“Throw Away Your Old Safety Forms”) in view of Wilson (“Better Methods, Better Results”).
Buresh et al. disclose a form for use in accident investigation (see page 62) comprising a first field for entering a description for describing the accident (see page 62, items 9, 10, and 11).

However, Buresh et al. fails to disclose text identifying the four possible mental states of an individual involved in the accident, a second field for identifying the mental state of the individual, text identifying the four state-to-error risk patterns, a third field for identifying the state-to-error risk pattern which resulted in the accident occurring, and text identifying critical error reduction techniques which might reduce the likelihood of the accident occurring again.

Wilson discloses a method of reducing the frequency of industrial accidents, as discussed in the rejection of claim 1 above. The method includes the steps of identifying the individual's mental state, identifying the state-to-error risk pattern, and identifying critical error reduction techniques.

Therefore, in view of Wilson, it would have been obvious to one of ordinary skill in the art to add fields corresponding to the method of Wilson to the form of Buresh et al. in order to reduce the frequency of accidents through accident investigations.

10. Claims 9 and 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson in view of Schwarz (US 2004/0249701).

Re claim 9: Wilson teaches a method of training individuals to avoid accidents, comprising the steps of, in response to an accident or close call:

determining the mental state of an individual at the time of an accident or close call (see page 3, step 2);

classifying the cause of the accident as being due to the individual being in one of four hazardous mental states (see page 3, step 1);

identifying a state-to-error risk pattern (see page 3, step 3); and identifying critical error reduction techniques associated with the state-to-error risk pattern, to the individual, to avoid future occurrences of accidents (see pages 3-4, step 4).

Wilson also teaches a form for marking down observations regarding critical behaviors (see "Observation Card", page 4).

However, Wilson fails to explicitly disclose providing a form for use in accident investigation comprising a first field for entering a description of the accident, text identifying the four possible mental states of an individual involved in the accident, a second field for identifying the mental state of the individual, text identifying the four state-to-error risk patterns, a third field for identifying the state-to-error risk pattern which resulted in the accident occurring, and text identifying critical error reduction techniques which might reduce the likelihood of the accident occurring again.

Schwarz teaches the use of an accident investigation form to monitor and track accidents and to promote jobsite safety (see Fig. 3; abstract). The form has a field for entering a description of the accident (see Fig. 4, "Give a description of the incident").

Therefore, in view of Schwarz, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the analysis of Wilson into the accident investigation form of Schwarz and to provide that accident investigation form for use in accident investigation in order to monitor and track accidents. The use of an accident investigation form helps to perform the analysis of Wilson by recording the relevant information in an organized manner.

Re claim 13: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of identifying critical error reduction techniques comprises the step of instructing the individual to “self trigger” on entering a hazardous state before making the error again in the future (see pages 3-4, step 4).

Re claim 14: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of identifying critical error reduction techniques comprises the step of instructing the individual to analyze close calls and small errors, learning from them, to reduce the likelihood of major accidents occurring (see page 4, “Help them analyze their close calls”).

Re claim 15: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of identifying critical error reduction techniques comprises the step of instructing the individual to observe others for patterns which increase risk (see page 3, step 4 “Explain the value of watching or observing other people for these ‘state-to-error patterns’”).

Re claim 16: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of identifying critical error reduction techniques comprises the step of instructing the individual to work on improving their good habits (see page 4, “demonstrate the importance of working on physical habits”).

Re claim 17: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of classifying comprises a step selected from the group consisting of:

- classifying the individual to be a in a mental state of “rushing” (see page 3, step 2);
- classifying the individual to be a in a mental state of “frustration” (see page 3, step 2);
- classifying the individual to be a in a mental state of “fatigue” (see page 3, step 2); or
- classifying the individual to be a in a mental state of “complacency” (see page 3, step 2).

Re claim 18: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses the step of identifying a state-to-error risk pattern comprises a step selected from the group consisting of:

- identifying a critical behaviour of “eyes not on task” (see page 3, step 1);
- identifying a critical behaviour of “mind not on task” (see page 3, step 1);
- identifying a critical behaviour of “(moving into or being in) the line-of-fire” (see page 3, step 1); or
- identifying a critical behaviour of “somehow losing your balance, traction or grip” (see page 3, step 1).

Re claim 19: The teachings of Wilson and Schwarz as applied to claim 9 above have been discussed. Wilson further discloses instructing the individual to perform the steps of claim 9 in response to the occurrence of smaller incidents (see page 4, “Help them analyze their close calls such as small bumps and bangs (eyes not on task), so they won’t have to analyze the big ones”).

Response to Arguments

11. Applicant's arguments filed 11/15/2007 have been fully considered but they are not persuasive.

Regarding the applicant's traversal of the rejection of claims 1-6 and 8 under 35 U.S.C. 101 (Applicant's Remarks, page 8), the examiner respectfully disagrees. The issue is not whether the method step may be performed at least once (i.e. teaching an individual), but rather if the method step is concrete (substantially repeatable, see MPEP § 2106(IV)(C)(2)(c)). The examiner is of the opinion that "teaching an individual" *may* be successful *sometimes*, but is not *substantially repeatable*. People are not able to learn all topics and thus it is a reasonable expectation that some people would not be able to learn critical error reduction techniques.

The examiner respectfully disagrees with the Applicant's argument that context of the Wilson article is completely different from accident investigation and prevention (Applicant's Remarks, pages 9-10). First, the applicant argues that "the Pareto analysis indicates that the analysis is being applied to a company's entire history of accidents or at least to a large statistical sample" (Applicant's Remarks, page 10). A history of accidents, or at least a large statistical sample, consists of individual accidents. Therefore, if the analysis is applied to the entire set, individual accidents are analyzed since the entire set is composed of individual accidents. Even if this not the case, the Wilson article teaches that employees should apply the same analysis to their own close calls (see page 4, "Help them analyze their close calls such as small bumps and bangs (eyes not on task), so they won't have to analyze the big ones").

The applicant argues that the order of steps described in the Wilson paper does not match that of claim 1 (Applicant's Remarks, bottom of page 10). The examiner notes that the order of the steps is not claimed. There is no indication, either explicit or implicit, that the steps of "determining the mental state" and "classifying the cause of the accident" must be performed in a certain order. The examiner does not believe that performing the two aforementioned steps in either order would affect the outcome of the method and that the Wilson paper thus reads on the limitations since there are no explicit or implicit claim limitations that restrict the order of the aforementioned steps. The Applicant further alleges that "one would not want to perform the step of 'classifying the cause...' before performing the step of 'determining the mental state...', as this would limit the options available" (Applicant's Remarks, page 11). The examiner does not agree with this assessment and believes that the outcome of the method would be the same, regardless of the order of those two steps. Furthermore, the applicant has not further explained his position regarding the order of the steps and merely alleges that the order of the steps is important.

The examiner respectfully disagrees with the examiner's argument that "Buresh et al. are stating that accident reporting forms should NOT be used" (Applicant's Remarks, pages 11-12). The examiner notes that the title of the article is "Throw Away Your Old Safety Forms." This is not equivalent to "Throw Away Your Safety Forms." Rather, the Buresh et al. article is directed towards applying a new process of analyzing accidents. Nowhere does the Buresh et al. article state or suggest that using investigation forms for recording information about accidents is flawed and should be discontinued. Even if Buresh et al. is teaching away from the use of investigation forms (which the examiner does not believe is the case), Buresh et al. still teaches that injury forms are commonly used to collect information (see page 61, first paragraph). The

Wilson paper does not teach a form used for accident investigations and the Buresh et al. article is used to teach that accident investigation forms are old and well-known in the art and it would have been obvious to modify the investigation form to collect the information required for the analysis of the Wilson paper.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin W. Lee whose telephone number is 571-270-1346. The examiner can normally be reached on Mon - Fri (8:30 - 5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BWL

Benjamin W. Lee
January 28, 2008

Ronald Laneau

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